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10/033,518	12/28/2001	Robert B. Hope	ULB-003CV	8646

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EXAMINER

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ART UNIT PAPER NUMBER

3634

DATE MAILED: 11/14/2005

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/033,518
Filing Date: December 28, 2001
Appellant(s): HOPE, ROBERT B.

Mr. Martin LuKacher
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/25/2005 appealing from the Office action mailed 3/9/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is substantially incorrect. The appellant is arguing the prosecution history of the application and not directly addressing the status of amendments after final. For clarity purposes, no amendments after the final office action dated 3/9/2005 have been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 5-7, and 9-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 5, it is not readily apparent to the Examiner if the applicant is claiming a weather seal or a method of forming a weather seal.

Claims 1, 3-5, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keys ('564) in view of Japanese patent No. 08012815A to Iwasa et al. Keys ('564) discloses a weather seal and process of forming the weather seal comprising a wire core on a spool, a first layer of material (EPDM)(17) encapsulating the wire core (16), chemical bonding adhesive, a second layer of material (21) encapsulating the first layer

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(17) and the wire core (16) wherein the first and second layers are extruded to form a weather seal. Keys ('564) fails to provide the first layer to be of recycled material. Japanese patent No. 08012815A to Iwasa et al. disclose a weather seal having two layers (11 and 13) with the inner layer (13) formed of recycled material. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the first layer of Keys to be formed of recycled material as taught by Japanese patent No. 08012815A to Iwasa et al. since it's well known that recycled material is cheaper to manufacture without sacrificing quality of the material.

Claims 2, 6, 7, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keys ('564) and Japanese patent No. 08012815A to Iwasa et al. as applied to claim 1 above, and further in view of Vinay. All of the elements of the instant invention are discussed in detail above except providing the wire core to be looped. Vinay discloses a weather seal having a core formed of wire looped. It would have been obvious to one of ordinary skill in the art at the time of the invention to form the core of the weather seal of Keys ('564) with loops as taught by Vinay since loops allows the core to be better reinforced by providing more surface area within the weather seal.

(10) Response to Argument**(7)(i)**

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It is not readily understood by the Examiner what is meant by the appellant identifying the grouping of claims and therefor, the Examiner will not address these arguments.

(7)(ii)

The appellant is stating that claims 5-7, 9, and 10 are product by process claims yet the appellant is arguing limitations of the process. As stated in previous rejections, little or no patentable weight is given to the process limitations per se (See MPEP section 2113). The 112 second paragraph was raised by the Examiner to make the record clear as to exactly what the appellant is trying to claim since the prosecution shows that the appellant was arguing the process but relying on product-by-process claims in doing so.

(7)(iii)(a)

The appellant is relying upon case law yet the appellant has failed to provide copies of the case law as required in MPEP 1205.

(7)(iii)(b)

The appellant argues that Keys ('564) shows no encapsulation of layers. As previously stated, Webster's Ninth New Collegiate Dictionary defines "encapsulating" as: to enclose in. As shown by Keys ('564), the joint 28 joins and overlaps two layers of plastics such that one encloses or covers the other. The appellant fails to provide

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limitations such that the entire surface of "one" material is encapsulated by a "second" material. In the broad interpretation of Keys ('564), a weather seal having a core (16) being encapsulated by "one" material (17) and a "second" material (21) encapsulating the core (16) and said "one" material (17, at the joint 28). It appears that the appellant's arguments are more limiting than that of the claims. Furthermore, the appellant argues that Japanese patent No. 08012815A to Iwasa et al. fails to show the claimed invention. It appears that the appellant is arguing the references individually and not in combination thereof. Iwasa et al. clearly discloses the use of two different types of rubbers/plastics wherein one is formed from recycled material and would have been obvious to one of ordinary skill in the art to provide the weather seal of Keys ('564) with a layer of recycled material since recycled material is cheaper and therefore the weather seal would be less expensive to manufacture. Still furthermore, the specific phraseology of "virgin elastomeric material" is discussed in several citations as cited by the Examiner.

(7)(iii)(c)

The appellant argues that Keys ('564) shows no encapsulation of layers as recited in (7)(iii)(b) and therefore the same response above is applicable. Furthermore, the appellant is arguing the process (i.e., is applied in semi-molten form) and not the apparatus per se.

(7)(iii)(d)

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The appellant argues the process in which the apparatus (the weather seal) is formed. As discussed in detail above (the grounds of rejection), Keys clearly discloses the product and the process of the weather seal and how it's formed.

(7)(iv)(a)

Again, the appellant argues the references individually and not in combination thereof. Vinay ('961) clearly discloses a core to be looped. It is well known in the art for years to provide different the core of a weather seal with different shapes and to provide a core to be looped such that the strength of the weather seal is increased would have been obvious to one of ordinary skill in the art at the time of the invention.

(7)(iv)(b)

The appellant's argument is based on the Keys ('564) and Iwasa et al. and not on the combination per se and has already been addressed above.

(7)(iv)(c)

The appellant is arguing the process, which is shown by Keys ('564) as discussed in detail above.

(11) Related Proceeding(s) Appendix


No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jerry Redman
Primary Examiner
AU 3634


Jerry Redman
Primary Examiner

Conferees:

Mr. Pete Cuomo

Mr. Richard Chilcot

